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In re Application of	:	
Ralf HIMMELREICH et al	:	DECISION ON
Application No.: 10/577,721	:	
PCT No.: PCT/EP04/11851	:	
Int. Filing Date: 20 October 2004	:	PETITION UNDER
Priority Date: 04 November 2003	:	
Attorney Docket No.: 075422-0015	:	
For: A RAPID AND LOW COST METHOD FOR	:	37 CFR 1.181
ISOLATING NUCLEIC ACID	:	

This decision is in response to the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT," filed on 14 December 2007 which is being treated as a petition under 37 CFR 1.181. Applicants have submitted, inter alia, a copy of the 01 March 2007 PTO stamped itemized postcard receipt. The itemized postcard lists, inter alia, the following item: Declaration and Power of Attorney.

BACKGROUND

On 02 May 2006, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). Applicants, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because no executed Declaration or Oath was provided with the transmittal letter at such time.

On 03 January 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by the International application number and international filing date. The notice indicated that the items above must be submitted within two (2) months from the date of this notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 30 November 2007, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) which indicated that the application is abandoned because applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905) mailed 01/03/2007 within the time period set therein.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 30 November 2007, applicants submitted on 14 December 2007 the instant petition requesting withdrawal of the Notice of Abandonment. In support of the request, applicants have provided a copy of the returned/stamped receipt card acknowledging a receipt date of 01 March 2007, within the time period of response.

DISCUSSION

Applicants' present petition accompanied by a copy of the following documents, filed purportedly with the USPTO as indicated in the stamped postcard:

- (1) Response to Notice to File Missing Parts of Application
- (2) Declaration, Petition & Power of Attorney
- (3) Late Filing Fee Surcharge of \$130.00

The postcard lists the above items and bears a USPTO date of stamp as March 01, 2007.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard is accepted as *prima facie* that a Declaration was deposited with the U.S. Patent and Trademark Office on 01 March 2007.

Accordingly, the date of receipt for the Declaration is 01 March 2007, which is considered timely. Accordingly, the instant application has been improperly abandoned.

DECISION

The petition under 37 CFR 1.181 is **GRANTED**. The Notification of Abandonment (PCT/DO/EO/909) mailed 30 November 2007 was in error and is hereby **VACATED**.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision. The 35 U.S.C. § 371(c)(1), (c)(2), and (c)(4) date is **01 March 2007**.



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